APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

93-CV-4479 (FB)

Received March 11, 1998

SOM NATH CHITKARA,

Plaintiff,

—against—

NEW YORK TELEPHONE and NYNEX CORPORATION,

Defendants.

Appearances:

For Plaintiff:
BARRY R. FEERST, Esq.
139 East 23rd Street
New York, New York 10010

For Defendants:
RONALD G. BURDEN, Esq.
1095 Avenue of the Americas
New York, New York 10036

ORDER

BLOCK, District Judge:

Defendants New York Telephone and NYNEX Corporation have moved to dismiss plaintiff's complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the reasons stated at oral argument, defendants' motion is granted in part and denied in part. The complaint is dismissed except for plaintiff's retaliation claim alleging that plaintiff's filing of a charge of discrimination with the EEOC on February18, 1992, triggered a letter from defendants dated April 24, 1992, that stated defendants would not negotiate with plaintiff. The basis of plaintiff's retaliation claim is discrimination based upon race and color. Plaintiff's state law invasion of privacy claim is not dismissed at this time.

SO ORDERED.

/s/ FREDERIC BLOCK
FREDERIC BLOCK
United States District Judge

DATED: Brooklyn, New York
March 6, 1998

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

93-CV-04479

United States Courthouse
Brooklyn, New York
January 26, 2001 9:30 o'clock a.m.

CHITKARA,

Plaintiff,

v.

NEW YORK TELEPHONE,

Defendants.

TRANSCRIPT OF DECISION
BEFORE THE HONORABLE STERLING JOHNSON, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:	ROCCO G. AVALLONE, ESQ.
For the Defendant:	RONALD G. BURDEN, ESQ.
Court Reporter:	Sheldon Silverman 225 Cadman Plaza East Brooklyn, New York11201 (718) 260-2537

Proceedings recorded by mechanical stenography, transcript produced by CAT.

THE COURT: I'll read my decision into the record.

Plaintiff, Som Chitkara, formerly employed by the New York Telephone Company, brings this action pursuant to Title VII of the Civil Rights Act of 1964, alleging that New York Telephone Company and NYNEX Corporation engaged in discriminatory, retaliatory and other illegal employment conduct. Defendant's motion for summary judgment wa granted, in part, and denied, in part, by Judge Frederick Block, one of the judges who has previously presided over this case. After the issuance of that order, the parties stipulated to dismiss all but plaintiff's retaliation claims. Magistrate Judge Robert Levy then ordered the parties to engage in mediation before a court-appointed mediator so as to settle the remaining retaliation claims. During that mediation session, plaintiff and defendants entered into a settlement agreement, which plaintiff now seeks to rescind. Presently before this Court is defendants' motion to enforce the parties' settlement agreement.

Plaintiff alleges that the settlement agreement was effected through coercion, undue influence, fraud and duress, and is therefore unenforceable. Plaintiff has made the following factual accusations in support of his claim.

Plaintiff challenges the administration of the mediation session, specifically the mediator's alleged failure to inform the parties of information such as the confidentiality of the mediation or the extent of the mediator's authority. Plaintiff next claims that during the mediation session, the mediator met privately with defendants at which time defendants informed the mediator that plaintiff had filed for bankruptcy and defendants provided the mediator with a copy of plaintiff's bankruptcy petition.

Plaintiff alleges that through these actions defendant encouraged the mediator to pressure plaintiff to sign the agreement by convincing plaintiff that his lawsuit was not listed on his bankruptcy petition and as such any monies ordered to plaintiff at trial would be seized by bankruptcy creditors. Plaintiff asserts that he relied on these misrepresentations and reluctantly signed the settlement agreement. Shortly after the signing the agreement, plaintiff learned that the lawsuit was listed on his bankruptcy petition and therefore exempted from being seized by creditors. Plaintiff's ultimate assertion is that but for the mediator's alleged false statements, he would not have entered into the settlement agreement.

Defendants contend that plaintiff voluntarily entered into the settlement agreement. Defendants argue that plaintiff was represented by counsel during the settlement negotiations, and that counsel was extremely familiar with the issues of the instant lawsuit.

Furthermore, defendants deny any improper communications with the mediator during the mediation session, and any prior knowledge of plaintiffs bankruptcy filing.

This court recognizes that plaintiff may now be unsatisfied with the terms of the settlement agreement. However, the court cannot find as a matter of law that the settlement agreement is voidable.

As stated in Kohl Industry Park Company versus County of Rockland, a settlement is a contract and once entered into is binding and conclusive. Kohl Industry Park Company versus County of Rockland, 710 F.2d, 895, 903 Second Circuit, 1983.

There can be no doubt that there was an agreement in this case. Although handwritten, there is a document listing the settlement terms, among them the defendants' obli-

gation to pay plaintiff $50,000 and plaintiff's obligation to dismiss the case with prejudice. The document was clearly signed by the defendants, plaintiff, and plaintiff's counsel. Even if plaintiff's conclusory allegations regarding defendants' participation in alleged fraud and misrepresentation were accepted as true, this court finds these allegations do not sufficiently plead fraud or misrepresentation. See Quiroga versus Fall River music Inc., 1996, WL 148363, Southern District New York, 1996.

Finding fraud must be pled with particularity. Plaintiff was represented by counsel during all of the settlement negotiations. Furthermore, plaintiff should have [5] known, or with minimal effort, could have ascertained the contents of his bankruptcy petition prior to entering into an agreement with defendant.

Finally, the Court finds the agreement enforceable as a matter of judicial policy. In Janneh versus GAF Corporation, the Second Circuit outlined the judicial and public policy which favors out-of-court settlement of disputes. Janneh versus GAF Corporation, 887 F.2d, 432, 435, 1989. The Janneh court recognized settlement as a "positive force, indispensable to judicial administration" and noted that "Congress has expressed a strong preference for encouraging voluntary settlement of employment discrimination claims in particular."

For the foregoing reasons, defendants' motion is granted. The parties to this action are hereby ordered to file a formalized and fully executed version of the settlement agreement with this Court within 20 days of this order. Of he.

MR. AVALLONE: Note my exception.

(Whereupon this matter was concluded for this date.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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93 CV 4479 (SJ)

Filed February 28, 2001

SOM N. CHITKARA,

Plaintiff,

—against—

NEW YORK TELEPHONE COMPANY
and NYNEX CORPORATION,

Defendants.

APPEARANCES:

CRONIN & BYCZEK, LLP
1983 Marcus Avenue Suite 140
Lake Success, New York 11042-1016
Attorneys for Plaintiff

VERIZON NEW YORK, INC.
and VERIZON CORPORATION
(formerly New York Telephone Company
and NYNEX Corporation)
1095 Avenue of the Americas
New York, New York 10036
By: Ronald G. Burden, Esq.
Attorney for Defendants

ORDER

JOHNSON, District Judge:

On January 29, 2000, this Court issued an Order granting Defendant's motion to enforce the parties' settlement agreement. It has come to the attention of the Court that the above-referenced Order incorrectly identified counsel for Plaintiff. Accordingly, the Court hereby amends that Order to reflect the true attorneys of record.

For the reasons stated on the record at the January 26, 2001 hearing, Defendants' motion to enforce the parties' settlement is granted. The parties to this action are hereby ordered to file a formalized and fully-executed settlement agreement with the Court within twenty (20) days of the above-referenced hearing.

SO ORDERED.

/s/ STERLING JOHNSON
U.S.D.J.

DATED: FEBRUARY 8, 2001
Brooklyn, New York

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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93 CV 4479 (SJ)

SOM N. CHITKARA,

Plaintiff,

—against—

NEW YORK TELEPHONE COMPANY
and NYNEX CORPORATION,

Defendants.

APPEARANCES:

SCHNEIDER GOLDSTEIN BLOOMFIELD, LLP
152 West 57th Street
New York, New York 11019
Attorneys for Plaintiff

VERIZON NEW YORK, INC.
and VERIZON CORPORATION
(formerly New York Telephone Company
and NYNEX Corporation)
1095 Avenue of the Americas
New York, New York 10036
By: Ronald G. Burden, Esq.
Attorney for Defendants

MEMORANDUM AND ORDER

JOHNSON, District Judge:

On January 26, 2001, this Court granted Defendants' motion to enforce the parties' settlement agreement. Presently before the Court is Plaintiff's motion for reconsideration pursuant to Rule 59(e) of the Federal Rules of Civil Procedure ("Federal Rule 59(e)"), and Eastern District of New York Local Civil Rule 6.3 ("Local Rule 6.3"). For the following reasons, Plaintiff's motion for reconsideration is denied in its entirety.

Background

Plaintiff Som N. Chitkara ("Plaintiff") alleged that his employer, Defendants New York Telephone Company and Nynex Corporation ("Defendants"), discriminated against him in the terms and conditions of his employment on the basis of his race, religion, and national origin. In 1990, after 20 years at the company, he retired under a special incentive retirement program offered by Defendants. Plaintiff claims that he was forced to retire in retaliation for his earlier complaints alleging discrimination. When his efforts to be reinstated or rehired for new positions were to no avail, Plaintiff filed the instant lawsuit. Defendants moved for summary judgment, which was granted, in part, and denied, in part, by Judge Frederic Block on March 6, 1998. The case was reassigned to this Court on June 6, 1999. On February 14, 2000, Magistrate Judge Robert Levy ordered the parties to engage in mediation before a court-appointed mediator to settle the remaining retaliation claims. During the mediation, the parties reached a settlement agreement, which was written out by hand and signed by the parties. Plaintiff sought to rescind the

agreement, alleging that his acquiescence was obtained through coercion, undue influence, fraud, and duress. Defendants moved to enforce the parties' settlement agreement, which was granted by this Court on January 26, 2001. Plaintiff has now moved for reconsideration of that Order.

Timeliness

Defendants argue that Plaintiff's motion should be barred as untimely. Local Rule 6.3 requires that motions for reconsideration be made within ten (10) days after the docketing of the court's determination of the original motion. This Court decided the motion at a hearing before the parties on January 26, 2001 and the Order was docketed on February 9, 2001. However, the docket sheet reflects that an Order enforcing the parties' settlement agreement was entered on February 28, 2001. Plaintiff filed this motion on March 9, 2001, within ten days of the later docket entry. Thus, this motion is considered timely filed.

Motion for Reconsideration

Local Rule 6.3 authorizes the Court to reconsider its own rulings or allow reargument at its discretion. The rule is strictly construed in order to keep the Court's docket free of unnecessary relitigation. *See Bell Sports, Inc. v. System Software Assocs., Inc.*, 71 F.Supp.2d 121, 125-26 (E.D.N.Y. 1999) party seeking reconsideration bears "difficult burden . . . in order to dissuade repetitive arguments") (internal quotations omitted); *Quartararo v. Catterson*, 73 F.Supp.2d 270, 273 (E.D.N.Y. 1999) (noting Rule 6.3's "design to prevent re-litigation").

Federal Rule 59(e) authorizes the Court to alter or amend a judgment at its discretion. *See McCarthy v. Manson*, 714 F.2d

234, 237 (2d Cir. 1983). The standard for granting a motion for reconsideration is strict; "reconsideration will be denied unless the moving party can point to controlling decisions or data that the court overlooked . . . that might reasonably be expected to alter the conclusion reached by the court." *Shrader v. CSX Transportation, Inc.*, 70 F.3d 255, 257 (2d Cir. 1995). A party may not advance a new argument in a motion to reconsider. *See Eisemann v. Greene*, 204 F.3d 393, 395 n.2 (2d Cir. 2000) ("To be entitled to reargument, a party 'must demonstrate that the Court overlooked controlling decisions or factual matters that were put before it on the underlying motion.'") (citation omitted); *see also Gallo v. Madera*, 136 F.3d 326, 330 (2d Cir. 1998) (upholding District Court's opinion that "the argument was untimely and that it would be 'an abuse of process' to let appellants try this new tack on a motion for reconsideration."). Nor may a moving party merely reiterate or repackage an argument previously rejected by the court. *See Resource N.E. of Long Island v. Town of Babylon*, 80 F.Supp.2d 52, 64 (E.D.N.Y. 2000) (A motion to reconsider "is not a vehicle to reargue those issues already considered when a party does not like the way the original motion was resolved.").

Here, Plaintiff moves for reconsideration on the grounds that this Court overlooked the mandatory confidentiality provisions of Local Civil Rule 83.11(d)(3) and Defendants' alleged violation of that confidentiality when they filed their motion to enforce the settlement. Further, Plaintiff argues that this Court improperly enforced the mediation settlement through application of an incorrect legal standard. None of these claims were raised in the original motion papers; thus they are not properly before this Court in a motion for reconsideration.

Confidentiality Provisions

Plaintiff first argues that the confidentiality provisions of the Eastern District's court-sponsored mediation program under Local Civil Rule 83.11(d)(3) prohibit the Court from enforcing the mediation settlement. This rule provides that "[i]nformation about what transpires during mediation sessions will not at any time be made known to the court. . . ." Plaintiff alleges that Defendants breached this rule when they filed a copy of the agreement with their motion to enforce the settlement agreement. This issue was not raised by either party in any of the previous motions. In his initial Memorandum of Law in Opposition to Defendants' Motion to Enforce Settlement Agreement, Plaintiff argued that the underlying settlement agreement was not valid as a result of alleged misrepresentations and coercion by the mediator. Indeed, Plaintiff himself revealed details of the mediation discussion and settlement agreement to the Court in arguing that it should not be enforced. This Court rejected those arguments. Plaintiff does not present any new legal authority that this Court overlooked previously. Thus, this Court declines to grant his motion for reconsideration on those grounds.

Enforceability of the Mediation Settlement

In further support of his motion for reconsideration, Plaintiff challenges this Court's decision in enforcing the mediation settlement. Plaintiff argues that the Court applied the wrong standard to enforcement of settlement agreements involving federal discrimination claims, and then contends that the Court may not enforce such agreements at all. Plaintiff did not initially raise these arguments before the Court or in his previous briefs prior to this Court's decision granting Defendants' motion to enforce the settlement. In fact, Plain-

tiff earlier asserted that contract law principles were the correct basis for consideration of the mediation agreement. (Pl.'s Mem. in Opp'n. To Defs.' Mot. to Enforce at 6.) At that time, Plaintiff applied New York Contract law in his attempt to show that the contract in question, the mediation settlement, was void or voidable. Plaintiff's newly proffered claim does not constitute supporting data or authority that was overlooked by this Court, but, in fact, is a completely new argument which contradicts his prior arguments. As such, it is not an appropriate basis for reconsideration. *See Eisemann*, 204 F.3d at 395 n.2; *Gallo*, 136 F.3d at 330. Accordingly, this Court denies Plaintiff's motion for reconsideration.

Conclusion

Plaintiff fails to present any controlling authority or data that the Court overlooked previously. Accordingly, his motion for reconsideration is DENIED.

SO ORDERED.

/s/ STERLING JOHNSON, JR.
U.S.D.J.

DATED: November __, 2001
Brooklyn, New York

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 01-7274

Filed September 6, 2002

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 6th day of September, two thousand and two.

Before:

HON. GUIDO CALABRESI,
HON. BARRINGTON D. PARKER, JR.,
Circuit Judges.

HON. SIDNEY H. STEIN,
*District Judge.**

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* The Honorable Sidney H. Stein, United States District Court for the Southern District of New York, sitting by designation.

SOM NATH CHITKARA,

Plaintiff-Appellant,

—against—

NEW YORK TELEPHONE COMPANY
and NYNEX CORPORATION,

Defendants-Appellees.

For Plaintiff-Appellant:

DONALD F. SCHNEIDER, Schneider, Goldstein & Bloomfield, LLP, New York, NY.

For Defendants-Appellees:

CARLA R. WALWORTH, Neil B. Stekloff, *on the brief*, Paul, Hastings, Janofsky & Walker, LLP, Stamford, Conn.

Appeal from the United States District Court for the Eastern District of New York (Sterling Johnson, Jr., *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court be and it hereby is AFFIRMED.

Plaintiff-Appellant Som Nath Chitkara ("Plaintiff") appeals from a decision of the district court (Johnson, *J.*) granting the defendants' Motion to Enforce the Parties' Settlement Agreement. We affirm the district court's decision for substantially the reasons it stated.

BACKGROUND

In the 1993, Plaintiff filed Title VII and state-law discrimination and retaliation claims against his former employer, the New York Telephone Company, and its parent company, the NYNEX Corporation (collectively, "Defendants"). Not long afterwards he filed for bankruptcy. In 1998, the district court (Block, *J.*) dismissed most of Plaintiff's claims as time-barred, leaving only a single retaliation count.[1] Hoping to resolve this final claim, counsel for both sides applied to participate in a court-annexed mediation program. Their application was granted, and mediation took place on June 12, 2000. What came out of the mediation was a handwritten agreement, signed by both parties and their respective attorneys, indicating that Plaintiff would dismiss his claim with prejudice in return for $50,000. What took place during the mediation is hotly contested and not verifiable on the record before us.

The heart of the matter, on Plaintiff's account, is that after meeting privately with Defendants' counsel who, Plaintiff surmises, provided the mediator with a copy of Plaintiff's bankruptcy petition,[2] the mediator harangued the plaintiff into settling: "Mr. Chitkara, Come on! What

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[1] In June of 1999, the case was transferred to the docket of Judge Johnson.

[2] Defendants allegedly got hold of this document through discovery.

are we doing here? You have no case! This case belongs to the trustees of the bankruptcy court." The mediator explained that the lawsuit was not listed on Chitkara's bankruptcy petition, and so if the case went to trial, any moneys recovered would go directly to creditors. The only way that Plaintiff would ever "see a dime," the mediator said, was if he "agreed to the mediated settlement then and there."

On the affidavit from Defendants' lawyer, however, the mediation was quite ordinary and, in any event, counsel for the defendants did not supply and could not have supplied the mediator with information about Plaintiff's bankruptcy because, at the time, counsel was unaware of it.

Within days of the mediation, Plaintiff learned from his bankruptcy attorney that his Title VII claim was in fact insulated from creditors of the bankruptcy estate. He promptly disavowed the settlement and cut ties with his Title VII attorney. Five months later, Defendants served a motion to enforce the settlement. Plaintiff responded by hiring a new attorney, who drafted and filed a Memorandum of Law in Opposition to the Motion to Enforce. This document advances not one legal argument, to wit, that the settlement agreement was voidable, pursuant to Restatement (Second) of Contracts § 164(2), because Plaintiff had justifiably relied on a fraudulent or material misrepresentation by the mediator. The court below granted Defendants' motion, holding that Plaintiff could not prevail even on his own version of the "facts," whereupon Plaintiff switched lawyers yet again and filed a motion for reconsideration. This motion advances a new theory of voidability and argues, in the alternative, that local mediation confidentiality rules preclude judicial enforcement of settlement agreements procured through court-annexed mediation unless the agreement has

been memorialized in a standard-form stipulation and filed with the court. The motion for reconsideration was denied, and this appeal followed.

On appeal, Plaintiff contends that the district court erred in denying the motion for reconsideration. He also puts forth several contract-based theories of voidability, and further proposes that the settlement is "a nullity" due to procedural violations of mediation rules.

DISCUSSION

In reviewing the district court's ruling on a motion for reconsideration, we apply an "abuse of discretion" standard, *see Devlin v. Transp. Communications Int'l. Union*, 175 F.3d 121, 131-32 (2d Cir. 1999), which is "one of the most deferential standards of review," *In re Bolar Pharm. Co.*, 966 F.2d 731, 732 (2d Cir. 1992) (per curiam). It is beyond question that the district court stayed well within the permissible range of discretion in denying the motion for reconsideration, as that motion pertained entirely to legal theories that Plaintiff had not earlier put before the court. *See Eisemann v. Greene*, 204 F.3d 393, 395 n.2 (2d Cir. 2000) (per curiam) ("To be entitled to reargument, a party must demonstrate that the court overlooked controlling decisions of factual matters that were put before it on the underlying motion." (citation and internal quotation marks omitted)). Plaintiff has no more right to have new theories heard on appeal than on reconsideration, and this is not one of those rare cases where we think it necessary to deviate from the usual policy to avoid a manifest injustice. *See Giordano v. City of New York*, 274 F.3d 740, 752 (2d Cir. 2001).

What remains, essentially, is Plaintiff's original contract-law claim, as he has elaborated it on appeal. But *justified*

reliance is integral to his claim, *see* Restatement (Second) of Contracts § 164(2) (1981), and this he cannot show. The nature of mediation is such that a mediator's statement regarding the predicted litigation value of a claim, where that prediction is based on a fact that can readily be verified, cannot be relied on by a counseled litigant whose counsel is present at the time the statement is made. That is in essence what the district court held, and we therefore affirm.

We have considered Plaintiff's remaining contentions and adjudge them meritless. Accordingly, the trial court's ruling is AFFIRMED.

For the Court,

ROSEANN B. MACKECHNIE,
Clerk of the Court

By: /s/ LUCILLE CARR
Lucille Carr

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 01-7274

Filed December 12, 2002

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 12th day of December, two thousand two.

Before:

HON. GUIDO CALABRESI,
HON. BARRINGTON D. PARKER, JR.,
Circuit Judges.

HON. SIDNEY H. STEIN,*
District Judge.

CHITKARA

v

New York Telephone

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* The Honorable Sidney H. Stein of the United States District Court for the Southern District of New York, sitting by designation.

A petition for panel rehearing having been filed herein by Som Nath Chitkara

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

FOR THE COURT
ROSEANN B. MACKECHNIE, Clerk

By: /s/ ARTHUR M. HELLER
Arthur M. Heller,
Administrative Attorney

APPENDIX F

Local Civil Rule 83.11. Court-Annexed Mediation
(Eastern District Only)

(a) Description. Mediation is a process in which parties and counsel agree to meet with a neutral mediator trained to assist them in settling disputes. The mediator improves communication across party lines, helps parties articulate their interests and understand those of the other party, proves the strengths and weaknesses of each party's legal positions, and identifies areas of agreement and helps generate options for a mutually agreeable resolution to the dispute. In all cases, mediation provides an opportunity to explore a wide range of potential solutions and to address interests that may be outside the scope of the stated controversy or which could not be addressed by judicial action. A hallmark of mediation is its capacity to expand traditional settlement discussions and broaden resolution options, often by exploring litigant needs and interests that may be formally independent of the legal issues in controversy.

(b) Mediation Procedures.

(1) Eligible cases. Judges and Magistrate Judges may designate civil cases for inclusion in the mediation program, and when doing so shall prepare an order to that effect. Alternatively, and subject to the availability of qualified mediators, the parties may consent to participation in the mediation program by preparing and executing a stipulation signed by all parties to the action and so-ordered by the Court.

(A) Mediation deadline. Any court order designating a case for inclusion in the mediation program, however arrived at, may contain a deadline not to exceed six months from the date of entry on the docket of that order. This deadline may be extended upon motion to the Court for good cause shown.

(2) Mediators. Parties whose case has been designated for inclusion in the mediation program shall be offered the options of (a) using a mediator from the Court's panel, a listing of which is available in the Clerk's Office; (b) selecting a mediator on their own; or (c) seeking the assistance of a reputable neutral ADR organization in the selection of a mediator.

(A) Court's panel of mediators. When the parties opt to use a mediator from the Court's panel, the Clerk's Office will appoint a mediator to handle the case who (i) has been for at least five years a member of the bar of a state or the District of Columbia; (ii) is admitted to practice before this Court; and (iii) has completed the Court's requirements for mediator training and mediator expertise. If any party so requests, the appointed mediator also shall have expertise in the area of law in the case. The Clerk's Office will provide notice of their appointment to all counsel.

(B) Disqualification.

* * *

(3) Scheduling the mediation.

* * *

(4) Written mediation statements.

* * *

(5) Mediation session(s). The mediator meets initially with all parties to the dispute and their counsel in a joint session. The mediator may hold mediation sessions in his/her office, or at the Court, or at such other place as the parties and the mediator shall agree. At this meeting, the mediator explains the mediation process and gives each party an opportunity to explain his or her views about the matters in dispute. There is then likely to be discussion and questioning among the parties as well as between the mediator and the parties.

(A) Separate caucuses. At the conclusion of the joint session, the mediator will typically caucus individually with each party. Caucuses permit the mediator and the parties to explore more fully the needs and interests underlying the stated positions. In caucuses the mediator strives to facilitate settlement on matters in dispute and the possibilities for settlement. In some cases the mediator may offer specific suggestions for settlement; in other cases the mediator may help the parties generate creative settlement proposals.

(B) Additional sessions. The mediator may conduct additional joint sessions to promote further direct discussion between the parties, or

she/he may continue to work with the parties in private caucuses.

(C) Conclusion. The mediation concludes when the parties reach a mutually acceptable resolution, when the parties fail to reach an agreement, on the date the Judge or Magistrate Judge specified as the mediation deadline in their designation order, or in the event no such date has been specified by the Court, at such other time as the parties and/or the mediator may determine. The mediator has no power to impose settlement and the mediation process is confidential whether or not settlement is reached.

(6) Settlement. If settlement is reached, in whole or in part, the agreement, which shall be binding upon all parties, will be put into writing and counsel will file a stipulation of dismissal or such other document as may be appropriate. If the case does not settle, the mediator will immediately notify the Clerk's Office, and the case or the portion of the case that has not settled will continue in the litigation process.

(c) Attendance at Mediation Sessions.

* * *

(d) Confidentiality.

(1) The parties will be asked to sign an agreement of confidentiality at the beginning of the first mediation session to the following effect:

(A) Unless the parties otherwise agree, all written and oral communications made by the

parties and the mediator in connection with or during any mediation session are confidential and may not be disclosed or used for any purpose unrelated to the mediation.

(B) The mediator shall not be called by any party as a witness in any court proceeding related to the subject matter of the mediation unless related to the alleged misconduct of the mediator.

(2) Mediators will maintain the confidentiality of all information provided to, or discussed with, them. The Clerk of Court and the ADR Administrator are responsible for program administration, evaluation, and liaison between the mediators and the Court and will maintain strict confidentiality.

(3) No papers generated by the mediation process will be included in Court files, nor shall the Judge or Magistrate Judge assigned to the case have access to them. Information about what transpires during mediation sessions will not at any time be made known to the Court, except to the extent required to resolve issues of noncompliance with the mediation procedures. However, communications made in connection with or during a mediation may be disclosed if all parties and, if appropriate as determined by the mediator, the mediator so agree. Nothing in this section shall be construed to prohibit parties from entering into written agreements resolving some or all of the case or entering and filing with the Court procedural or factual stipulations based on suggestions or agreements made in connection with a mediation.

(e) Oath and Disqualification of Mediator.

(1) Each individual certified as a mediator shall take the oath or affirmation prescribed by 28 U.S.C. § 453 before serving as a mediator.

(2) No mediator may serve in any matter in violation of the standards set forth in Section 455 of Title 28 of the United States Code. If a mediator is concerned that a circumstance covered by subparagraph (a) of that section might exist, e.g., if the mediator's law firm has represented one or more of the parties, or if one of the lawyers who would appear before the mediator at the mediation session is involved in a case on which an attorney in the mediator's firm is working, the mediator shall promptly disclose that circumstance to all counsel in writing. A party who believes that the assigned mediator has a conflict of interest shall bring this concern to the attention of the Clerk's Office in writing, within ten calendar days of learning the source of the potential conflict or the objection to such a potential conflict shall be deemed to have been waived. Any objections that cannot be resolved by the parties in consultation with the Clerk's Office shall be referred to the Judge or Magistrate Judge who has designated the case for inclusion in the mediation program.

(3) A party who believes that the assigned mediator has engaged in misconduct in such capacity shall bring this concern to the attention of the Clerk's Office in writing, within ten calendar days of learning of the alleged misconduct or the objection to such alleged misconduct shall be deemed to have been waived. Any objections that cannot be resolved by the

parties in consultation with the Clerk's Office shall be referred to the Judge who has designated the case for inclusion in the mediation program.

(f) Services of the Mediators.

(1) Participation by mediators in the program is on a voluntary basis, without compensation. Attorneys serving on the Court's panel will be given credit for pro bono work.

(2) Appointment by the Court's panel is for a three year term, subject to renewal. A panelist will not be expected to serve on more than two cases during any twelve month period and will not be required to accept each assignment offered. Repeated rejection of assignments will result in the attorney being dropped from the panel.

(g) Immunity of the Mediators. Mediators shall be immune from liability or suit with respect to their conduct as such to the maximum extent permitted by applicable law.